IV.

MUNICIPAL HISTORY

OF

NEW ORLEANS

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

SEVENTH SERIES

IV

MUNICIPAL HISTORY
OF
NEW ORLEANS

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MUNICIPAL HISTORY OF NEW ORLEANS.

I.

For nearly two centuries after the discovery of America, the Mississippi River remained almost unknown; and it was not until the year 1682 that LaSalle picked his perilous path from Canada by the way of Lake Michigan and the Illinois, and descended the great stream to its mouth. He was exploring under the patronage of Louis Fourteenth, and gave the name of Louisiana to the vast valley.

The first permanent settlement made by the French in this new domain was established at Biloxi, now in the State of Mississippi, which was founded by Iberville in 1699, and was the chief town of the colony until 1702, when Bienville moved headquarters to the Mobile River. The soil in the neighborhood of Biloxi is sandy and sterile and the settlers depended mainly on supplies from France and St. Domingo. The French Government, distant and necessarily ignorant of the details of pioneer life, sent instructions to search for gold and pearls. The wool of buffaloes was also pointed out to the colonial officials as the future staple commodity of the country, and they were directed to have a number of these animals penned and tamed.[1] It is hardly necessary to say that but little profit was ever realized from the search for gold and pearls, or from the shearing of buffaloes.

[1] Martin's History of Louisiana, chap. 7.

In 1712 the entire commerce of Louisiana, with a considerable control in its government, was granted by charter to Anthony Crozat, an eminent French merchant. The territory is described in this charter as that posessed by the Crown between Old and New Mexico, and Carolina, and all the settlements, ports, roads and rivers therein, principally the port and road of Dauphine Island, formerly called Massacre Island, the river St. Louis, previously called the Mississippi, from the Sea to the Illinois, the river St. Philip, previously called the Missouri, the river St. Jerome, previously called the Wabash, with all the lands, lakes and rivers mediately or immediately draining into any part of the river St. Louis or Mississippi. The territory thus described was to be and remain included under the style of the government of Louisiana, and to be a dependency of the government of New France to which it was subordinated. By another provision of this charter, the laws, edicts and ordinances of the realm and the Custom of Paris were extended to Louisiana.

The grant to Crozat, which seemed so magnificent on paper, extending as it did from the Alleghenies to the Rocky Mountains, and from the Rio Grande and the Gulf to the far Northwest, proved of little use or value to him, and of little benefit to the colony; and in 1718 he surrendered the privilege. In the same year the charter of the Western or Mississippi Company was registered in the Parliament of Paris. The history of this scheme, with which John Law was connected, is well known. The exclusive commerce of Louisiana was granted to the Company for twenty-five years, and a monopoly of the beaver trade of Canada, together with other extraordinary privileges; and it entered at once on its new domain. Bienville was again appointed Governor. He had become satisfied that the chief city of the colony ought to be established on the Mississippi, and so in 1718 the site of New Orleans was selected. Its location was plainly determined by the fact that it lies between the River and Lake Ponchartrain, with the Bayou St. John and the Bayou Sauvage or Gentilly

affording navigation for a large part of the distance from the lake towards the river. And even at this early day there was a plan of constructing jetties at the mouth of the Mississippi and so making New Orleans the deep water port of the Gulf. Pauger, the engineer, reported a plan for removing the bar at the entrance of one of the passes, by the same system in principle as the one recently and successfully adopted by Mr. James B. Eads under the Act of Congress of 1875.[1]

Le Page du Pratz visited the place during the same year, and took up a plantation on the Bayou St. John, "a short half league from the site of the Capital," which he says was "then marked only by a shed covered with leaves of latanier," the building, such as it was, being occupied by the Commandant of the Post.[2]

The seat of government was finally removed to New Orleans in August, 1722, and when Charlevoix visited the place, in December, 1723, it contained about one hundred houses, mostly cabins. The well-known map of 1728 shows the town protected by a levee and laid off in rectangular form, having eleven squares front on the river by a depth of six squares.

In 1732 the Western Company surrendered its grant. In 1763 a secret treaty was signed at Paris by which France ceded to Spain all that portion of Louisiana which lay west of the Mississippi together with the City of New Orleans, "and the Island on which it stands." The war between England, France and Spain was terminated by the treaty of Paris in February, 1764. By the terms of this treaty the boundary between the French and British possessions in North America was fixed by a line drawn along the middle of the River Mississippi from its source to the River Iberville and thence by a line in the middle of that stream and of lakes Maurepas and Ponchartrain to the Sea. France ceded to Great Britain the River and Port of Mobile and everything

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[1] Statutes at large, Vol. 18, p. 463.

[2] Hist. de la Louis., tom. 1, p. 83.

she had possessed on the left bank of the Mississippi except the town of New Orleans and the Island on which it stood. As all that part of Louisiana not thus ceded to Great Britain had been already transferred to Spain, it followed that France had now parted with the last inch of soil she had owned on the Continent of North America.

From its foundation up to this date New Orleans was governed by the Superior Council, a body which had general control of the colony, but at the same time took special charge of the administration and police of the Capital. This council had been first established under Crozat, in 1712, by royal edict with powers equivalent to those of similar bodies in St. Domingo and Martinique, and consisted of the governor and commissary ordonnateur; its existence being limited to three years from the day of its first meeting. In September, 1716, it was reorganized by a perpetual edict and composed of the governor general and intendant of New France, the governor of Louisiana, a senior counsellor, the King's lieutenant, two puisné counsellors, an attorney general and a clerk. The edict gave to the council all the powers exercised by similar bodies in the other colonies. Its sessions were directed to be held monthly. One of its most important functions was judicial, for it determined all cases, civil and criminal, in the last resort. In civil cases three members constituted a quorum, in criminal cases five. There was a possibility of popular representation in the provision that, in the absence and lawful excuse of members, a quorum might be completed by calling in notables.

The transfer of the colony to the Western Company called for another change in the organization of the Council; and by an edict of September 1719 it was made to consist of such directors of that Company as might be in the provinces, together with the commandant general, a senior counsellor, the two King's lieutenants, three other counsellors, an attorney general and a clerk.

On the surrender of the charter of the Western Company in 1732, the Council was again remodeled by royal letters

patent of May 7th. The members were declared to be the governor general of New France, the governor and commissary of Louisiana, the King's lieutenant, the town mayor of New Orleans, six counsellors, an attorney general and a clerk. In August, 1742, the increase of trade had caused such an increase of litigation that it was deemed necessary to add to the judicial force; and accordingly by royal letters patent the commissary ordonnateur was directed to appoint four assessors to serve for a period of four years,—their duties being to report in cases referred to them, or to sit when they were required to complete a quorum or to break the dead-lock of a tie vote.

Under such a régime New Orleans was hardly a municipal corporation in any English or American sense. It certainly had at that time no municipal charter. It resembled in some respects a commune, and has been alluded to by the Supreme Court of Louisiana as having been at that time a city.[1]

II.

The French inhabitants of the colony were astonished and shocked when they found themselves suddenly transferred to Spanish domination, and a majority of the Superior Council undertook in their official capacity to organize an opposition to the Cession and to order away the Spanish Governor, Antonio de Ulloa. But the power of Spain, though moving with proverbial slowness, was roused at last; and in 1769 Alexander O'Reilly, the commandant of a large Spanish force, arrived and reduced the province to actual possession. The leaders in the movement against Ulloa, to the number of five, were tried, convicted and shot. Another was killed in a struggle with his guards. Six others were sentenced to imprisonment, and the seditious documents of the Superior Council were burned on the Place d'Armes.

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[1] 3 Annual Rep., 305.

On the 21st of November, 1769, a proclamation from O'Reilly announced that, inasmuch as the Superior Council had encouraged this insurrection, it had become necessary to abolish the body, and to establish in Louisiana that form of government and mode of administering justice prescribed by those laws which had so long maintained peace and contentment in the American colonies of the Catholic King. In the place, therefore, of the Council, a Cabildo was established, over which the governor himself would preside in person, and which was composed of six perpetual regidors, two ordinary alcaldes, an attorney general syndic and a clerk.

The offices of Perpetual Regidor and Clerk were acquired by purchase and were in the first instance offered at auction. The purchaser had the right to transfer his office by resignation in favor of a known and capable person. One half of the price of the first transfer and one third of each successive one went to the royal treasury. Of these regidors or rulers, the first was Alfarez Real, or royal standard bearer; the second was Alcalde Mayor Provincial, a magistrate with jurisdiction over offences in the rural districts; the third was Alguazil Mayor, a civil and criminal sheriff; the fourth was Depositario General, or government store-keeper; the fifth was Recibedor de Penas de Camara, or receiver of fines, while the sixth merely held his seat in the Cabildo without special official duties.

The ordinary Alcaldes and Attorney General Syndic were chosen by the Cabildo itself on the first day of every year, and were required to be residents and householders of the town. In the absence of the unanimous vote they could not be re-elected until they had been out of office for the space of two years respectively.

The ordinary Alcaldes were individually judges within the city in civil and criminal cases where the defendant did not possess and plead the right to be tried by a military judge, *fuero militar*, or by an ecclesiastical court, *fuero ecclesiastico*. In cases where the matter in dispute did not exceed twenty dollars, they proceeded summarily at chambers, and without

written record. In other cases a record was made up by a notary, the case was heard in open court, and where the matter in dispute exceeded ninety thousand maravedis ($330.88), an appeal lay to the Cabildo itself. That body did not undertake as such, to examine the case but selected two regidors, who, with the Alcaldes who had heard the cause below, reviewed the proceedings.

The Attorney General Syndic was not, as his title might seem to indicate, the public prosecutor. He appears to have been, in his way, a tribune of the people, though not chosen by them. It was his duty to propose to the Cabildo such measures as the popular interest required and to defend the popular rights.

O'Reilly presided over the first session of the Cabildo in December, 1769, and then yielded the chair to Unzaga, who had been commissioned as governor, with the understanding that he should not assume the duties of the position until the captain-general should request him to do so.

Beyond the limits of the town, in each rural parish, an officer of the army or of the militia was stationed, and acted both as military commandant and chief civil officer. But the city was governed by the Cabildo, and such continued to be its municipal administration during the Spanish rule.

By a proclamation of February 22, 1770, the captain-general created and assigned to the City of New Orleans a special revenue. It consisted of an annual tax of forty dollars on every tavern, billiard table and coffee house, and of twenty dollars on every boarding house; an impost of one dollar on every barrel of brandy brought to the city, and a tax of three hundred and seventy dollars on the butchers of the place. To enable the city to keep up the levee, an anchorage duty was also established in its favor, of six dollars upon every vessel of two hundred tons and upwards, and three dollars on smaller craft. These exactions were not exorbitant, but they were the seed of a system which has since become extensive and vicious. New Orleans to-day is exacting large sums in the way of

license taxes on pursuits which require no police regulation, and in the guise of wharf dues which are really a tax on commerce. The germs thus sown in Spanish times have grown like the mustard tree of Scripture, and require vigorous uprooting. In connection with the subject of revenue it may be noted that New Orleans suffered greatly during the Spanish domination from restrictions on the freedom of trade. The colonial theories of Spain with respect to commerce were of the most benighted character, and it may be stated as a general rule that it was only by evasions of law that the trade of New Orleans was permitted to grow.

In 1779 war was declared by Spain against Great Britain and New Orleans was thus called upon to assist the American colonies in their struggle for independence. The youthful and brilliant Galvez received a commission of governor and intendant, and took the field at once with an army of about fourteen hundred men, made up of his regular troops, the militia, a number of Americans of the city who volunteered their services, and "many of the people of color."[1] By the last of September he had captured Fort Bute on Manchac, and Baton Rouge, Fort Panmure at Natchez, and small posts on the Amite and Thompson's Creek. The campaign seems to have had a literary as well as a military result. Julien Poydras, afterwards a member of the Congress of the United States, celebrated its successes in a small French poem which was printed at the royal charge. In May, 1781, Galvez captured Pensacola and the province of West Florida was surrendered to Spain.

On October 1, 1800, a treaty was concluded between France and Spain by which the latter promised to restore the province of Louisiana. France, however, did not receive formal possession until November 30th, 1803, when, in the presence of the officers of both nations the Spanish flag was lowered, the tri-color hoisted and delivery made to France.

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[1] Martin: Vol. 2, p. 48.

The French commissioner, Laussat, had come as colonial prefect, and issued a very rhetorical proclamation congratulating the people upon their return to the bosom of France, and had received in reply an address from the prominent citizens declaring that no spectacle could be more affecting than such return. The joy, however, was of brief duration. The cession to France had been procured by Napoleon, and he did not deem it politic to retain such a distant and exposed domain; and already in April 1803, Louisiana had been ceded to the United States. On the 20th of December 1803, Governor Claiborne took formal posession for the United States, and "the tri-color made room for the striped banner under repeated peals of artillery and musketry."[1]

In the meantime, however, Laussat had by proclamation established a municipal government for New Orleans, in place of the Cabildo.[2] It was composed of a Mayor, and two Adjuncts, and ten members of the Council. The names are familiar in our earlier history. Boré was mayor; his associates were Destrehan and Sauvé; the members were Livaudais, Cavelier, Villeré, Jones, Fortier, Donaldson, Faurié, Allard, Tureaud, and Watkins. Derbigny was secretary and Labatut treasurer.

III.

As stated by the Supreme Court of Louisiana,[3] New Orleans, which had been "a city under the royal governments of France and Spain was created a municipality under the ephemeral dominion of the Consulate." Under the American domination the new territorial Legislature deemed it proper to establish its political organization by a charter of the American type, and this was done in February, 1805. The Court finds in the decision above referred to, that "the act to incorporate

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[1] Martin: Vol. 2, p. 199.
[2] Id., p. 197.
[3] Louisiana State Bank vs. Orleans Nav. Co., 3rd Annual Rep., 305.

the City of New Orleans of the 17th of February of that year, like all the statutes passed at the commencement of the American government of Louisiana—to the honor of their authors be it said—is a model of legislative style and exhibits its intendment with a clearness and precision which renders it impossible to be misunderstood. It provides for the civil government of the city and in general terms confers powers of administration; and in the various special delegations of authority it contains thereby excludes the idea of any other powers being granted than such as the police and the preservation of good order of the population require. * * * It prescribes the duties of the principal officers and designates specially the objects for which money may be raised by taxation, as well as the objects of taxation. The whole tenor of the act is a delegation of power for purposes of municipal administration, guarded by limitations, and accompanied by such checks as experience had shown to be wise, expedient and even necessary for the interest of those who were to be affected by it."

The officers under this charter were a Mayor, a Recorder, a Treasurer, and a number of subordinate officers, and the Council was composed of fourteen Aldermen. Two from each of the seven wards into which the city was divided. The Mayor and Recorder were at first appointed by the Governor of the territory but the officers were afterward made elective. The Aldermen were required to be "discreet" inhabitants of and free holders in their respective wards, and were elected in each ward by voters who, to be qualified, were required to be free white male inhabitants who should have resided in the city for at least one year, and should have been for at least six months free-holders possessing and owning a real estate worth at least five hundred dollars, or renting a household tenement of the yearly value of one hundred dollars. By an amendment of 1812, the Aldermen were required to be "of good fame and possessed of property in their respective wards," and the Mayor, thenceforth to be elected, to have had a resi-

dence in the city for the four years preceding his election, and to possess in his own name for the last year in the city a real estate of three thousand dollars, agreeably to the tax list. The voters under this amendment were required to have paid a State, parish or corporation tax, or to have possessed for six months a real estate of the value of five hundred dollars conformably to the tax list. By an amendment of 1818, the right to vote for municipal officers was extended to all free white male citizens of the United States of the age of twenty-one years who had resided in the city and in the ward for six months next preceding the election and who had paid a State tax within the year preceding the election.

By this charter of 1805 all rights and property which had belonged to the City of New Orleans, or had been held for its use by the Cabildo under the Spanish government, or by the municipality after the transfer of the province in the year 1803 to France, or to the municipality at the moment, and which had not been legally alienated, lost or barred, were vested in the Mayor, Aldermen and inhabitants.[1]

In 1836 another charter was imposed by the State Legislature. It was undoubtedly procured as a result of differences of opinion as to municipal methods between the Creoles of the old régime and the rapidly increasing American population of Anglo-Saxon origin. It was a curious experiment in city affairs. The territory of New Orleans was divided into three separate municipalities, each having a distinct government with many independent powers; yet with a Mayor and General Council with a certain superior authority.[2] It was the idea of local self-government pushed to an extreme. It existed for sixteen years, and during its existence many important public improvements were made. At the same time the system afforded many opportunities for corruption and extravagance. Large floating debts were contracted and

[1] Acts of 1805, p. 64.
[2] Acts of 1836, p. 28.

it appeared to all that some reform must be effected. In 1852, by legislation of that session, the three municipalities, together with the City of Lafayette, lying next above New Orleans, were consolidated by a new charter; and stringent provisions made for the funding of the debt. An interesting discussion of this charter, with respect to the bonded debt, is found in a decision of the Supreme Court of the United States rendered in 1881.[1] By this charter, and its supplemental act,[2] the legislative power of the new corporation was vested in two bodies, a Board of Aldermen and a Board of Assistant Aldermen, and its executive power in a Mayor, four Recorders, a Treasurer, a Comptroller, a Surveyor, a Street Commissioner, and such subordinate officers as the Council might deem necessary. The debt was funded, and in 1855 it was reported that obligations of $7,700,000 had been reduced to but little more than $3,000,000.

In 1856 the charter was amended and re-enacted, and elaborate provisions made in regard to assessment and taxation, and under this legislation the corporation continued until the year 1870.

IV.

In the meantime the Civil War came on; and upon the capture of New Orleans by the forces of the United States, in May, 1862, the administration of the affairs of the city became the subject of military action. No change could be made at the time in existing legislation. A military Mayor was detailed to perform the duties of that office; and such affairs of the city as required attention during a complete military occupation were entrusted to the Finance Committee and the Committee of Streets and Landings of the Council. As a matter of course the administration of a large city under such circumstances and by such means, under military control, gave

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[1] Louisiana *vs.* Pilsbury, 105 U. S. Reports, 278.

[2] Acts of 1852, pp. 42–57.

rise to many singular questions. For an investigation of some of them the reader is referred to the decisions of the Supreme Court of the United States which are cited in the subjoined note.[1]

The discussion, however, of such controversies cannot throw much light on the problem of municipal government in times of peace. But it may be suggested that the promptness and efficiency of military action in matters of police and sanitation in New Orleans, during the late war, were a valuable object lesson, and furnish some of those compensations which, Mr. Emerson declared, always accompany calamity.

The year 1870 witnessed an experiment in municipal government in New Orleans which deserves special mention. The charter enacted in that year by the Legislature,[2] adopted what was generally known as the Administration system. The limits of the city were considerably enlarged by including what is now known as the sixth district, and was formerly Jefferson City, and the government of the municipality thus established was vested in a Mayor and seven Administrators; namely, one of Finance, one of Commerce, one of Improvements, one of Assessments, one of Police, who was ex-officio a member of the Police Board; one of Public Accounts, and one of Waterworks and Public Buildings. These officials in the first place possessed administrative and executive functions corresponding to their names; and each of the seven was accordingly at the head of a bureau or department created for him by the statute as follows: a Department of Finance, which was the city treasury; a Department of Commerce which had general superintendence of all matters relating to markets, railroads, canals, weights and measures, the fire department and manufactories; a Department of Assessment, with general superintendence of all matters of taxation and license; a Department

[1] New Orleans *vs.* The Steamship Co., 20 Wallace, 387; The Venice, 2 Id., 259; Grapeshot, 9 Id., 129; Mechanics, etc. *vs.* Union Bank, 22 Id., 276.

[2] Acts of 1870, extra session, No. 7.

of Improvements charged with the construction, cleansing and repair of streets, sidewalks, wharves, bridges and drains; a Department of Police having charge of public order, houses of refuge and correction, and the lighting of the city; a Department of Public Accounts which comprised all the duties of an Auditor and Comptroller; and, finally, a Department of Water-works and Public Buildings, with supervision of water-works, school-houses, hospitals and asylums.

But in the second place it was provided that the same Mayor and Administrators should form the Council and in a collective capacity should have extensive legislative power for local purposes. In this capacity it resembles the Spanish Cabildo. Such a Council possessed naturally many valuable qualities. Its members were elected on a general ticket and were not supposed to represent any local clique. In the exercise of their administrative duties they became familiar with the need of their respective departments and could advocate, explain or defend on the floor of the City Legislature what was desired or had been done in the bureau. A small and compact body, its meetings were as business-like as those of a bank directory. Its custom was to assemble in the Mayor's parlor, generally on the day before the regular weekly meeting; and sitting in committee of the whole, to discuss with any citizens who chose to attend, such subjects of public interest as might be brought up. Reporters from the daily press were present, and the journals of the next morning gave full particulars of the interchange of ideas. If the subject seemed very important and difficult, leading citizens were invited by letter or advertisement to attend and give their views. As an example of thorough discussion it may be mentioned that an ordinance in relation to sewerage and drainage which was proposed in 1881, was debated for upwards of one year, and a hearing given to every friend or opponent who desired to express his views.

No system of government can pretend to be perfect; and the charter of 1870 could not satisfy every one. It was

claimed that the Council under the charter was too small and could be too easily controlled in the interests of private or corporate gain. No preponderant evidence, however, of this assertion ever appeared. The administrators as a rule, were citizens prominent either in business or politics, and as such were far more amenable to public opinion than the ordinary councilman of the average American city. Their methods were essentially business-like and their legislation as a whole was characterized by public spirit and progress.

It is a matter of regret that the administration system could not have been continued longer than it was, but after the adoption of a new State constitution in 1879 a powerful pressure for a complete change was established by local politicians. The Legislature accordingly, in June, 1882, adopted the present charter of New Orleans.[1] The City of Carrollton had already, in 1874, been annexed,[2] and the limits of the existing municipality are therefore very extensive.

By this charter the legislative power of the corporation is vested in one Council composed of thirty members elected by the qualified voters of their respective districts. They must be citizens of the State not less than twenty-five years of age; must be residents of the districts they represent; and must have been residents of the city for five years next preceding their election.

The executive power is vested in a Mayor, a Treasurer, a Comptroller, a Commissioner of Public Works, and a Commissioner of Police and Public Buildings, who are elected on a general ticket. These officers must be at least twenty-five years of age, except the Mayor, who must be at least thirty, citizens of the State and residents of New Orleans for five years next preceding their election. The Mayor presides at the meeting of the Council; and the other executive officers of the city mentioned above have a right to seats on the floor

[1] Acts of 1882, No. 20.
[2] Acts of 1874, No. 71.

of the Council during its sessions, with a right to debate and discuss all matters having reference to their respective departments, but without a vote. This is a valuable provision, and if executed in good faith cannot but produce a beneficial effect.

The executive officers above named may be impeached and removed by the Council for malfeasance or gross neglect of duty, or disability affecting fitness to hold office. Articles of impeachment may be preferred by the Committee of Public Order (who in this case on the trial will be recused), or by six members of the Council, or by twenty citizens.

Some check on hasty legislation is imposed, firstly, by the usual veto power in the Mayor, and secondly, by the provision that "no ordinance or resolution shall pass the Council at the same session at which it is first offered, but any ordinance or resolution shall at its first offering be read in full and shall lie over one week before being finally considered by the Council."

The Fire Department of New Orleans is still of a volunteer character. It is organized as a charitable association, and naturally retains many of the sentiments and traditions which have become obsolete in other American cities, where the paid system has been introduced as a part of municipal government. It has an existing contract with the city for the extinguishment of fires which has yet some two years to run. It is not likely that this contract will be renewed. The city has become so large that while the Firemen's Charitable Association is theoretically composed of volunteers, it is obliged to pay a large number of regular employes in the care of the engine houses and horses, and the use of the steam engines and other apparatus which have superseded the simple appliances of earlier years. The press is agitating for a paid, governmental system. It is alleged that the voluntary system has been used as a political machine in local and even in State politics, that it is cumbrous and costly, and that the time for its usefulness has past. The paid members of the association

will make no objection to being transferred to municipal control, and such transfer will probably be made as soon as it can be done without impairing contract rights.

The topography of New Orleans gives constant and pressing importance to questions of levees, drainage and paving. Large expenditures have been made in this direction during the last half century. The trouble in these matters, as in most of our American cities, has been to secure some system that should be continuous, consistent, and rightly administered. The soil of the entire city is alluvial, and the fall, such as it is, is from the Mississippi towards Lakes Ponchartrain and Borgne. To pave such a soil in such a way as to form a surface that will sustain heavy traffic, during winter rains, is a problem of difficulty. For business streets, square blocks of granite are found to last longer than any other material. Some of the principal avenues have been asphalted on a foundation of concrete. Others have been laid with from nine to twelve inches of gravel which is claimed to possess concreting qualities, and is in some instances laid on a foundation of cypress planks which are expected to resist decay until the needful arch is formed above them.

What is specially needed now is a system by which the work on the levees, the drainage and the paving of the city shall be harmonized, and continued without interruption until it shall be completed in a manner worthy of the place. The legislative committee of the Council has within the last week[1] prepared an act on this subject which the Council has approved and requested the State Legislature to adopt. It establishes a Commission of Public Works in the City of New Orleans, composed of the Mayor and Commissioner of Public Works, of the chairmen of five standing committees of the Council on such subjects, and of six citizens to be selected from different districts of the city. The matter of levees, paving and drainage is to be entrusted to this Commis-

[1] June, 1888.

sion, certain funds of the city are to be turned over to it, and it is empowered to submit to a vote of property taxpayers the question of a special tax for its further revenue under a constitutional provision which will be presently referred to. If this legislation be adopted it may lay a foundation of permanent and consistent improvements.

The water supply of New Orleans is drawn from the Mississippi River and is in the hands of a Company, in which, however, the city has some stock and a representation on the board of direction. The first company was incorporated in 1833, as the Commercial Bank, at a time when it was the fashion to charter banks with a power to do something quite irrelevant to the operations of finance. By a provision of the charter the city had the right to purchase the works at any time after the lapse of thirty-five years. This right was exercised in 1869, and bonds issued for the amount of the appraisement. The city operated the system until 1877, when, being in default in the interest on the bonds as well as on the rest of her funded debt, it was deemed wise to put the concern in the hands of a business corporation. This change was effected under the Act of March 31, 1877, the bonds given in 1869 being mostly exchanged for stock in the new company. Under this Act, as interpreted by the Courts, the Water-works Company has a monopoly of the supply of water for sale, which is to last for fifty years from the date of the act of 1877.[1] Some improvements have been made of late in the service by the introduction of a stand-pipe, with a head of sixty feet, and by some extension of the mains. The problem of filtering the water, however, remains unsolved. It is, as a rule, very muddy and unattractive for any purpose. The use of cistern water, stored in cypress tanks, above ground, is almost universal in New Orleans. Such water, exposed to light and air and renewed by frequent showers, is clear and white, makes a charming bath and when filtered through

[1] 115 U. S., 674; 120 Id., 64; 125 Id., 18.

porous stone as it may easily be, is agreeable and wholesome for drinking.

The gas supply of the city on the left bank, except in the Sixth and Seventh Districts, is furnished by a business corporation, which, after a considerable amount of contest in the Courts has by consolidation acquired an exclusive right for fifty years from 1875. The details of the legislation and of the discussions in regard to it will be found, like many other facts of the history of New Orleans, in the decisions of the Supreme Court of the United States.[1] The contest, however, with the new methods of electrical lighting has taken the place of litigation in the Courts. Already the arc light has driven gas entirely from the streets, and the incandescent lights are beginning to be numerous in shops and even in dwellings. One of the newest and largest churches is thus illuminated. With wire doors and windows, electric lights and electric fans, a library in New Orleans may be made as comfortable in August as in January. What may be the outcome of the struggle between cheap water-gas and electricity, it is not the province of this paper to predict. At the moment, electricity dominates in public places, and a system of iron towers for carrying the wires has already been begun.

V.

The City of New Orleans has been at different times the recipient of donations for charitable purposes, which may be briefly referred to as part of her municipal history, and as throwing perhaps some light upon the question whether such gifts should be made to municipal corporations or placed in the hands of private trustees.

In 1838 by the will of Alexander Milne, a native of Scotland, property of apparently large value was left to four

[1] N. O. Gas Co. *vs.* La. Light Co., 115 U. S., 650 and cases there cited.

asylums. The trust, so far as the Asylum for Destitute Boys is concerned, is now managed by the Mayor and the assets comprise a large amount of real estate of little present value, and some city bonds worth about $3,000.

The will of Joseph Claude Mary, in 1840, left $5,000 to the orphans of the First Municipality of New Orleans. After some litigation this bequest was declared by the Court[1] to vest in the Municipality, and should therefore be administered by the present City. At last accounts it had been turned over to a Boys' Asylum which is a private corporation. The reasons for this diversion of funds are not apparent, and, until some excuse be forthcoming, may be treated as inexcusable.

About the same time Stephen Henderson, a native of Scotland, bequeathed the sum of $2,000 per annum for the poor of the Parish of Orleans, a territory now co-terminus with and controlled by the City of New Orleans. By an act of compromise with the heirs, the parish then, and the city now, has acquired sundry cotton-press lots, the rents of which are dispensed in small sums in charity to the poor. The bequest in this form can hardly be considered of much practical value. At least, from the hard-hearted view of modern political economy, such gratuities can produce little effect except to destroy the self-respect and will-power of the recipients.

The Girod Fund was left by the will of Nicholas Girod, who died in 1840. Its administration has not been felicitous. The principal, which in 1866, had reached a sum of about $80,000, was expended in the erection of an asylum for the charitable purposes contemplated by the will. The building for some reason, never made public, was erected on the margin of a swamp in the rear of the city, in the most unwholesome locality that could have been selected, and is entirely useless.

The Touro Alms House bequest was made by the will of Judah Touro, a well known philanthropist, who died in 1854.

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[1] 2 Robinson, 438.

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The sum of $80,000 was left "to prevent mendicity in New Orleans." The trust was administered by the city. The Alms House was completed in 1860 at great expense on a site donated by Mr. R. D. Shepherd. In 1864 while occupied by United States troops it was destroyed by fire, and nothing tangible now remains of the charity except the land and a fund of about $5,000. It is believed that the United States ought in equity to restore the value of the building.

The Fink Asylum Fund results from dispositions in the will of John B. Fink, of November, 1855, and has assets reported at about $290,000. The bequest was for an asylum "for Protestant Widows and Orphans"; and the Court after some litigation decided[1] that it should be administered by the city. The income is used for the support of an asylum for the object named.

The Sickles Legacy was left, in 1864, by S. V. Sickles, an apothecary, for the purpose of establishing a "dispensary for indigent sick persons." It is administered by the Mayor and the financial officers of the city, by arrangement with druggists, who agree to dispense medicines to the poor at certain localities. Its fund now amounts to about $36,000.

The McDonogh donation was the most important of those under consideration; was the one most peculiar in its character; and was a matter which concerned also the City of Baltimore. John McDonogh, a native of Baltimore, came to the City of New Orleans about the year 1800, lived the life of a somewhat eccentric bachelor, and died in 1850. The principal feature of his will was an attempt to establish an estate which was to be perpetual in its existence and was to grow into something prodigious in its proportions. As stated by the learned Mr. Hennen, in his summary of the litigation in the Supreme Court of Louisiana,[2] the decision in which was concurred in, substantially, by the Supreme Court of the

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[1] 12 Annual Rep., 301.

[2] Hennen's Dig., p. 443; 8 Annual Rep., p. 171.

United States,[1] McDonogh, after certain special legacies in apt terms, bequeathed all the rest of his estate to the cities of Baltimore and New Orleans, for certain purposes afterward mentioned, and especially the establishment and support of free schools for the poor only, of all colors in both cities. He directed his executors to invest his personal property in real estate to constitute a fund, never to be alienated, but to exist for all time, a perpetual entity, christened "My General Estate." Commissioners annually appointed by the cities, and subject to their visitation, were to have forever the seizin and exclusive management of this estate, the annual revenues of which were to be applied as follows: one-fourth to two designated institutions of pious character, to the former for a certain number of years, to the latter until a certain sum had been received, when both annuities were to cease; another fourth to the cities, to be handed over to their appointed directors to found certain charities, and when each city had received a certain sum these annuities in like manner were to cease; while the remaining two-fourths were to be divided between commissioners appointed by the cities, to whom, on termination of the other annuities, the whole revenues were to be paid to support the free schools in both cities.

No part of the estate or its revenues was ever to go into the hands of the corporate authorities, the testator declaring his great object to be "the gradual augmentation of the real estate to belong to and be owned by the General Estate for centuries to come." And this estate, and the several funds and institutions created, he recommended, should be incorporated. No partition was ever to be made by the cities, nor any change by agreement or compromise in their relations to each other or the estate; and if they violated any of the conditions, their rights were to be forfeited, and the estate, still inalienable, was limited over equally to the States of Louisiana and Maryland, to educate their poor as they might direct. If

[1] 15 Howard, p. 367.

the legacies lapsed from any cause whatever, they were to enure to the States, to carry out the testator's intentions as far as they thought proper. The ultimate design was to educate the poor of the two cities, and disinherit the legal heirs. It was held by the Court, after great discussion, that the cities had the capacity to take the legacies, which were not void for uncertainty in the recipients of the charities; that there were no prohibited substitutions or *fidei commissa* in the bequests, of the conditions of which, so far as impossible or against public policy, the will was to be eviscerated; that the States could not take instead of the cities, which, as residuary legatees under a universal title, were entitled to the legacies; and that in any contingency the heirs at law could claim nothing.

The net result of the McDonogh will cases was to give the property to Baltimore and New Orleans, subject to sundry legacies and charges which were paid or compromised. The extraordinary plan which the imagination of the testator had formed in his lonely hours of celibacy was never realized; but the object was to some practical extent attained. The net proceeds of the estate were divided between the cities, to be applied to educational purposes. The popular belief has been that the trust has not been well administered by New Orleans. This belief, however, is not well founded. The amount of the estate was much exaggerated; portions of it were depreciated in the lapse of time, and the expenses of defending it were heavy. The city received in round numbers about $750,000. With the proceeds she has erected and furnished eighteen school houses. At an early period of the late war some of the assets were diverted for the purpose of fortifying the city, but were afterwards restored. The present value of the property, including the school houses, is estimated at about $800,000.

These various trust funds have gone through so many perils, and especially in times of civil war, that it is not believed such bequests will ever be again made in the future as in the past. From one point of view the city, by the continuity of its life

and the publicity of its methods, offers assurances of safety and care. The general verdict, however, would be that it is better for a testator to vest his benefactions in a private corporation, or, better yet, if possible, to establish them in full operation before his death.

VI.

It may be proper to refer to the history of the elective franchise under the successive constitutions of Louisiana, in connection with the history of the city government of New Orleans. By the Constitution of 1812, the qualified elector is declared to be the "free white male citizen of the United States who at the time being hath attained the age of twenty-one years, and resided in the country in which he offers to vote one year next preceding the election, and who in the last six months prior to said election shall have paid a state tax; provided, that every free white male citizen of the United States who shall have purchased land from the United States shall have the right of voting whenever he shall have the other qualifications of age and residence above described."

By the Constitution of 1845 it was provided that "in all elections by the people every free white male, who has been two years a citizen of the United States, who had attained the age of twenty-one years, and resided in the State two consecutive years next preceding the election, and the last year thereof in the parish in which he offers to vote, shall have the right to vote."

By the Constitution of 1852 the qualified elector is declared to be the "free white male who has attained the age of twenty-one years and who has been a resident of the State twelve months next preceding the election, and the last six months thereof in the parish in which he offers to vote, and who shall be a citizen of the United States."

The Constitution of 1864 declared that every white male who had attained the age of twenty-one years, and who had

been a resident of the State twelve months next preceding the election and the last three months thereof in the parish in which he offers to vote, and who was a citizen of the United States should have the right of voting.

By the Constitution of 1868 the right of suffrage, except in certain cases of disfranchisement, was further extended to include every male person of the age of twenty-one years or upwards, born or naturalized in the United States, and subject to the jurisdiction thereof, and a resident of the State one year next preceding an election and the last ten days within the parish in which he should offer to vote.

Finally, by the Constitution of 1879, a further step was taken, and the right of suffrage, whether in State or municipal elections, now belongs to every male citizen of the United States, and every male person of foreign birth who has been naturalized or who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years of age, and who has resided in the State one year, in the parish six months and in the ward or precinct thirty days, next preceding the election.

It will thus appear that the personal right of suffrage in New Orleans has been gradually extended until its latitude is extreme. Another provision, however, of the present Constitution alluded to above, establishes a safe-guard against the extravagance which might result from a misuse of the elective franchise as it affects the use of the taxing power. The City Council is prohibited from levying an annual *ad valorem* tax for general purposes exceeding one per centum on the assessed value of property, real and personal. Of course there are other taxes for the interest on city bonds, which must continue until the bonds are paid, but the tax for general purposes, or alimony of the city, is limited to the ten mills. At the same time, for the purpose of constructing "works of public improvement," the rate of taxation "may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the property tax-payers" of

the "Municipality entitled to vote under the election laws of the State and a majority of same voting at such election shall have voted therefor."[1] By this plan a certain control is vested in the property tax-payers, in a manner which promises to be beneficial.

Referring again to the successive constitutions of the State, attention may be directed to the protection they have sought to afford to the right of the citizens of New Orleans to deal directly as voters with the question of its police. The provision in the fundamental law of 1812 was as follows:

"The citizens of the town of New Orleans shall have the right of appointing the several public officers necessary for the administration and the police of said city, pursuant to the mode of election which shall be prescribed by the legislature; provided that the Mayor and Recorder be ineligible to a seat in the general assembly."

By the constitutions of 1845 and 1852 the right was limited to the appointment, by the same methods, of the "officers necessary for the administration of the police of the city," and it was held by the Supreme Court that these provisions, whether in 1812, 1845, or 1852, did not impair the power of the legislature to deal with the drainage of the city, either directly or through the agency of a company.[2]

In the constitution of 1864 the provision was repeated as to the administration of the police, while the Governor, however, was empowered to appoint five commissioners, who, with the Mayor, should constitute a board to try and remove delinquent policemen.

The entire provision was omitted from the constitution of 1868, and under this the legislature introduced a metropolitan police system, imitated from that then existing in New York, and including a considerable territory outside the city limits; and it was held to be lawful because the provision in question

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[1] Constitution of 1879, art. 209.

[2] *In re* Draining Co., 11 La., Art. 338.

had been so omitted.[1] The commissioners were appointed by the Governor.

In the constitution of 1879 the right was restored by the following language:

"The citizens of the City of New Orleans, or of any political corporation which may be created within its limits, shall have the right of appointing the several public officers necessary for the administration of the police of said city, pursuant to the mode of election which shall be provided by the general assembly."[2]

Under the present charter of the city—of 1882—the Mayor appoints police officers, policemen, and watchmen, by and with the consent of a majority of the Council, under the ordinances of the Council organizing the force, and may suspend such officers, reporting the fact and the cause to the Council for its action. He is empowered to control and make regulations for the force, the Council, however, having the right by a two-thirds vote to repeal such regulations.[3]

VII.

The full history of a city government is not to be found in the statute books or the ordinances of its Common Council; and this sketch would be incomplete without some notice of those voluntary associations on the part of citizens of New Orleans which during the last decade have attempted to assist or influence the city government in corporate matters.

The Auxiliary Sanitary Association was organized after the epidemic of 1878 for the purpose of promoting public health. It was felt that, in the condition of the finances of the City, it was necessary to invoke private subscription. The appeals of the Association met with a liberal response; and the Association has continued to carry on its work, not only by a constant

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[1] Diamond *vs.* Cain, 21 La., Annual Rep., 309.

[2] Art. 253.

[3] Acts of 1882, p. 23.

criticism of imperfect methods, but by some positive works of public improvement. The most important of these is the system of appliances for flushing the gutters during the summer months with water from the Mississippi River. New Orleans is so situated that it is considered impracticable to construct the large subterranean sewers which are necessary to carry off storm waters. Such storm waters are therefore conveyed by gutters and draining canals to low points in the rear of the city and thence lifted by draining wheels into the lake. To flush these gutters and canals in hot weather, the Association has erected on the levee two steam pumps with a daily capacity of about 8,000,000 gallons each, and arranged a system of pipes by which the principal streets at right angles to the river are supplied with flushing water. It is said that such appliances if constructed by the city would have cost $200,000. The Association, by its closer and more skilful business methods procured them for about $75,000.

Without assuming any partisan attitude, mention may be made in this connection of two other associated efforts which have recently exercised much influence in the municipal history of New Orleans. One is called the Committee of One Hundred, the other the Young Men's Democratic Association.

The Committee of One Hundred was organized in the spring of 1885. It has taken no part in partisan politics, and none of its members can be a candidate for office. Its chief object is municipal reform. Its labors during its first year were chiefly performed in a scrutiny of official malfeasance or neglect, and in appeal to the Courts to enjoin and annul such acts of the Council as were considered illegal and injurious. Its first success in this direction was an injunction of an appropriation of $5,000 for a purpose decided to be beyond the power of the Council to make. The amount was not great, but the example was impressive.[1] In the latter part of 1887 and the early days of 1888 its most important work has been in purifying the registration of voters. This registration,

[1] The Liberty Bell, 23 Federal Reporter, 843.

intended to be a protection against illegal voting, was being used, as such devices often are, to facilitate fraud. The committee availed itself of serious disputes between the local political factions to intervene between them in this matter, and succeeded in making an examination of the books and a quite thorough house-to-house canvass of the city. The result was that not less than twelve thousand names were erased from the registration and the poll books. Many of these were fraudulent; many, however, were names of persons who were dead, or who had left the city, or moved their residences. In any event, such lists and papers might be used for purposes of fraud, and it was felt that this feat alone justified the existence of the committee.

The Young Men's Democratic Association was organized in October, 1887. It was said that the Holy Roman Empire was so called because it was neither Holy, nor Roman, nor an Empire. The association in question is not composed entirely of young men, nor of members of what is called the Democratic party. It takes no part in State politics. It has declined to participate in the primaries. Its object is declared to be "to promote the election of men of integrity and ability, irrespective of creed or calling, to fill the municipal offices of the City of New Orleans." It is provided by its constitution that "no member of this organization shall hold or be a candidate for any office, nor shall the organization enter into any combination or trade with any political faction." It freely assisted the Committee of One Hundred in the tedious work of purging the registration, and then waited to see what nominations would be made by the regular party organizations for the election of April 17, 1888. Dissatisfied with such nominations as were made, it put forth a ticket of its own, and then stood guard at the polls for nearly four days while the vote was being cast and counted. The unexpected happened, and the Young Men's ticket was elected amid much enthusiasm; and the hope is now freely indulged that the present executive officers and Council of the city will introduce many important reforms.